

The Complaint of Village Green)
Subdivision, Inc. Oldham County,)
Kentucky, against Ash Avenue Sanitary) CASE NO. 7711
Sewer Co., Inc.)

On March 10, 1980, the Commission received a letter from the attorney for Village Green Subdivision ("Village Green") in Oldham County, Kentucky, complaining that the tap fees payable by the developers of Village Green to Ash Avenue Sanitary Sewer Company, Inc., were unlawful since such fees had never been approved by the Public Service Commission. A hearing was held on this matter in the Commission's offices in Frankfort, Kentucky, on April 17, 1980, at which time representatives of Village Green and Ash Avenue presented testimony and were cross-examined. Based upon the evidence adduced at that hearing and information subsequently submitted by the parties hereto, the Commission makes the following FINDINGS of fact:

1. Ashbrooke Development Corporation was formed in 1969 for the purpose of constructing new homes on 225 lots on 100 acres of land in Oldham County. Confederate Estates subdivision was subsequently developed by a separate partnership on land adjacent to Ashbrooke Development. In late

1973, Ashbrooke Development and Confederate Estates formed a new corporation for the purpose of providing sewerage service to the homes to be developed in these two subdivisions. This new corporation was named Ash Avenue Sanitary Sewer Company, Inc. ("Ash Avenue"). This construction was completed in 1974. Since Ash Avenue was in operation prior to this Commission's receiving jurisdiction over private sewerage systems on January 1, 1975, no certificate of public convenience and necessity was required of Ash Avenue.

2. In 1976, Village Green Subdivision began developing property on the opposite side of Ashbrooke Development and within a quarter mile of that development. The owner of Village Green then began negotiations with Ash Avenue whereby that utility would also serve the 150 lots in the Village Green development. These negotiations culminated in a written contract between Village Green and Ash Avenue that was signed on February 1, 1978. This written agreement provided that Village Green shall pay Ash Avenue \$600 for each home attached to the sewer system for the first 31 homes; for all homes attached in excess of 31, Village Green was to pay Ash Avenue \$831 in 1977, and \$930 in 1978, increasing \$100 per year per connection thereafter until all of Village Green's lots have been attached to the sewer system. Ashbrooke Development and Confederate Estates were required to pay a flat \$1,000 per tap to Ash Avenue.

3. After Village Green began developing the lots in the subdivision, it paid Ash Avenue some of the tap fees as required in the contract. However, Village Green later stopped paying such fees contending that it was being treated unfairly in relation to Ashbrook Development and Confederate Acres. Ash Avenue then sued Village Green in the Oldham Circuit Court and obtained a judgment against it for \$8,000. A second suit by Ash Avenue against Village Green is now pending in the same court for an additional \$19,000. The record before the PSC indicates that this second suit may be held in abeyance pending the Commission's decision herein.

CONCLUSION

Based on the above-stated findings of fact, the Commission is of the opinion and concludes as follows:

The contractual arrangements between Ash Avenue Sanitary Sewer Company and the three development corporations, Ashbrook Development, Confederate Estates and Village Green Subdivision, are outside the scope of this Commission's jurisdiction. This follows because no sewer service is being provided by Ash Avenue to the respective development corporations and, accordingly, the development corporations are not "customers" of the utility as required for complaint proceedings under the provisions of KRS 278.260. This matter is, therefore, properly before the Oldham Circuit Court since this Commission has no jurisdiction to resolve contractual disputes

between a utility and private entities that are not customers of such utility.

WHEREFORE, based upon the above-recited findings of fact and conclusions of law, the Public Service Commission hereby ORDERS that this matter be, and it hereby is, dismissed.

Done this 15th day of April 1981, at Frankfort, Kentucky.

PUBLIC SERVICE COMMISSION

Martin M. Voth
Chairman

Katherine Randall
Vice Chairman

L. G. Carrigan
Commissioner

ATTEST:

Secretary